

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

**AUG 17 2006**

EARL LEE WALKER,

Petitioner - Appellant,

v.

ERNEST C. ROE, Warden,

Respondent - Appellee.

No. 02-16386

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

D.C. No. CV-01-06289-JON  
Eastern District of California,  
Fresno

ORDER

Before: O'SCANNLAIN, COWEN,\* and BEA, Circuit Judges.

We deny petitioner Walker's motion to withdraw the memorandum disposition filed July 10, 2006. The court's order in *Gaston v. Palmer*, 447 F.3d 1165 (9th Cir. 2006), amended its opinion at 417 F.3d 1030 (9th Cir. 2005) and is binding on us. *See Overstreet v. United Bhd. of Carpenters & Joiners of Am., Local Union No. 1506*, 409 F.3d 1199, 1205 n.8 (9th Cir. 2005). We also note the mandate has now issued in *Gaston*, No. 01-56367. Walker speculates that further action on *Gaston* may be taken by the Supreme Court, but we decline to withdraw our disposition on that basis.

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\* The Honorable Robert E. Cowen, Senior United States Circuit Judge for the Third Circuit, sitting by designation.

We will and hereby do recall the mandate in this case for a different purpose, to amend the memorandum disposition. The memorandum disposition is amended to change the first two sentences of the second paragraph to: “Walker challenges his 1998 State of California conviction for first-degree burglary and possession of cocaine, which conviction became final on July 14, 1998. Absent tolling, under 28 U.S.C. § 2244(d)(1)(A) of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), Walker had until July 14, 1999, to file his § 2254 petition.”

With these amendments, the mandate shall issue forthwith.

The electronic docket has been updated to show the correct filing date of the memorandum disposition as July 10, 2006.

Walker’s counsel’s motion to withdraw is hereby granted.